

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CHAD E.,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. L 2007030896

**DECISION**

On May 21, 2007, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Pomona, California.

Daniela Martinez, Fair Hearings Program Manager, represented the San Gabriel/Pomona Regional Center (hereinafter SGPRC or regional center).

Neil and Jackie E. appeared on behalf of their son, Chad E. (claimant).

The matter was submitted on May 21, 2007.

**ISSUE**

1. Should the regional center be required to reimburse claimant's parents for 40 hyperbaric oxygen therapy treatments rendered by Dr. Rochelle Neally of Long Beach?

2. Should the regional center be required to fund the cost of 40 additional hyperbaric oxygen therapy treatments with Dr. Neally?

**FACTUAL FINDINGS**

1. Claimant is a 10-year-old autistic boy who lives in La Verne with his parents. He is non-verbal and communicates by hand gestures. He requires assistance with eating, bathing, brushing his teeth, combing his hair and tying his

shoes. Claimant attends a third-grade class at Williams Elementary School in Glendora and receives speech therapy and occupational therapy from the school district. The regional center provides respite services. Following claimant's last Individual Program Plan (IPP) meeting in May of 2006, the regional center also authorized funds for a social/recreational program and for behavior intervention services. His parents have funded other activities, such as gym, swimming, horseback riding and softball. At one time the regional center approved funding for music therapy. However, the parents were not satisfied that any benefit was being realized from that service, and it was cancelled at their request. Likewise, a program of discrete trial training was cancelled by the parents as it was viewed by them as unhelpful.

2. The behavior management program focused on a number of behaviors that were of concern to claimant's parents. The program commenced in August 2006. Baseline behaviors were quickly established: claimant was running away from his caregiver five times per day, he engaged in uncontrollable crying five times per week, he engaged in tantrums or screaming at school five to six times per week, he tended to grab objects from others three to four times per week, and evidenced a lack of potty training three or four times per day. Mother was reported to be "extremely concerned and stressed" as a result of these problems and her perceived lack of support at school. The behaviors also had an adverse affect on claimant's ability to socialize and the family's ability to participate as a group in the community, such as at a restaurant. In a progress report dated February 5, 2007, the behavior management consultant indicated progress in all areas except potty training. The incidence of running away had been reduced from five to one time per day; uncontrollable crying from five to two times per week; tantrums/screaming from five or six times per week to two times per week; and grabbing of objects from three or four times per week to one or two times. It was suggested that claimant's behavior is due in large part to frustration from his inability to communicate. The parents were commended for the work they have devoted to the program in the home setting. The vendor recommended the program continue for another three months. However, the parents testified that the behavior interventionist "quit" in January of 2007, and no such services have been offered since that time.

3. Beginning in November 2006, claimant's parents funded the cost of 40 hyperbaric oxygen therapy (HBOT) treatments provided by Dr. Rochelle Neally of Long Beach. Dr. Neally is a chiropractor who also operates an HBOT clinic. Her brochure describes HBOT as "a specialized therapy that uses an increase in atmospheric pressure to allow the body to incorporate more oxygen into blood cells, blood plasma, cerebral spinal fluid and other body fluids. The healing process occurs when a severely compromised tissue in the body begins to receive oxygen, and blood circulation to the tissue resumes." She lists autism among 18 "conditions that may help with HBOT [sic]." Claimant's parents paid \$4,000 for these treatments.

4. Both Mr. and Mrs. E. testified to dramatic improvements in their son since beginning HBOT. They credit HBOT with their son's improved appetite and weight gain and improved behaviors. They believe the sessions "took the edge off" his behaviors. The family is now able to eat in a restaurant in comfort. Small changes in routine do not seem to trouble claimant as before. While claimant still does not talk, he seems to be "a happy boy now." Claimant's speech and language pathologist provided a letter dated May 19, 2007, which confirms the parents' view that claimant's behaviors have improved dramatically and also notes an improved "ability to stay focused, interact, initiate communication, and express his self [sic] through modes of communication."

5. Although regional center approval was not sought prior to the initiation of HBOT, the parents are now asking that regional center be ordered to reimburse them for the cost of 40 sessions, and to fund the cost of 40 additional sessions.

6. Support for the use of HBOT with autistic children, from a scientific standpoint, is offered by claimant in the form of internet research. One article from Science Daily reported in April 2007, that more than 20 clinics in the U.S. are beginning to study the use of HBOT with autistic children, and a Honolulu clinic reports quality of life improvements in its patients. The same article, however, quotes an autism expert at the University of Wisconsin as follows: "But ... there is absolutely no reason to think that improving oxygen levels in a child with autism will be helpful." The Honolulu work with HBOT in autistic children is the subject of a Chicago Tribune article. The article quotes critics of the therapy who point out that all evidence thus far is anecdotal; no scientific studies have been done to date. A newsletter from the International Hyperbarics Association, Inc. (IHA), cited the work of an early autism research pioneer, Dr. Bernard Rimland, who the newsletter claimed was a proponent of HBOT in the treatment of autism. In various articles, Dr. Dan Rossignol and others have reported improvements in symptoms of autistic children. Dr. Rossignol, a Virginia physician who is also a medical advisor to the IHA, has reported that HBOT has shown "potent anti-inflammatory effects" in animals. "Based upon these findings [and studies that have shown reduced blood flow to the autistic brain] it is hypothesized that HBOT will improve symptoms in autistic individuals."

7. SGPRC sought the opinion of Larry Yin, M.D., a regional center medical consultant. Dr. Yin reviewed the scientific literature, including the literature discussed in Finding 6, above. He concluded that there is a lack of "any randomized, double blind, placebo, clinical trials using HBOT, a type of study which would lend strong support to its efficacy. Again, much of the popularity for using HBOT has come from anecdotal case reports of improvement, similar to the use of secretin, chelation therapy and other alternative treatments in autism. Unfortunately, at this time, HBOT is not an accepted treatment for autism and there is not sufficient evidence in the medical literature to substantiate or justify its use."

## LEGAL CONCLUSIONS

1. Regional centers are charged with the responsibility in this State for securing for the developmentally disabled all necessary services and supports that maximize opportunities and choices for living, working, learning and recreating in the community. (Welf. & Inst. Code, § 4640.7, subd. (a).)

2. Welfare and Institutions Code, section 4512, subdivision (b), states, in part:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer ... and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to ... personal care, day care, domiciliary care, special living arrangements ... supported living arrangements.

3. Welfare and Institutions Code, section 4646, subdivision (a), states:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is further the intent of the Legislature to ensure that the provision of

services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

4. Welfare and Institutions Code, section 4648, subdivision (a)(2), provides: “Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.” And [w]here there are identified gaps in the system of services and supports or where there are identified consumers for whom no provider will provide services and supports contained in his or her individual program plan, the department [and by extension, the regional center] may provide the services and supports directly.” (Welf. & Inst. Code, § 4648, subd. (g).)

5. “It is further the intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.” (Welf. & Inst. Code, § 4646, subd. (a).)

6. The importance of establishing a scientific basis to order a regional center to fund a medically-related treatment for autism is highlighted in this matter by the temporally coincidental behavioral intervention services being provided claimant over the time claimant’s behaviors demonstrated such dramatic improvement. A properly conducted scientific study would isolate and thus distinguish other environmental factors, and certainly other focused treatments and services, from the treatment modality being studied; in this case, HBOT. In addition to the current, questionable reliability of the research on HBOT as a treatment modality for autism, it cannot be concluded with any confidence in this matter that claimant’s progress is not due to the services provided specifically to address those behaviors that have shown the greatest improvement. The abrupt termination of those services, while not the subject of this Fair Hearing, is unfortunate and the IPP team ought to address the desirability of reinstituting some form of behavior intervention program. Meanwhile, the parents’ choice to continue HBOT is theirs, as is the burden of bearing the cost for the therapy, unless and until the generally accepted scientific research establishes a reasonable basis for the use of HBOT in the treatment of the autistic.

7. Claimant’s parents readily admit that the science of HBOT, as applied to their son’s condition, is not clear, although they are convinced the treatments have helped him. And these parents have demonstrated on at least two occasions in the past that they have no desire to spend regional center funds on ineffective therapies. Unfortunately, no medical professional, even Dr. Neally, has offered an opinion in support of claimant’s request in this matter. To issue the requested order would be to engage in speculation regarding the science in favor of parental intuition, which, while potentially valid and unquestionably a powerful force of nature, cannot form the basis of a decision here.

## ORDER

1. Claimant's request that SGPRC reimburse his parents for the cost of 40 sessions of HBOT is denied.

2. Claimant's request that SGPRC fund the cost of 40 additional sessions of HBOT is denied.

## NOTICE

This is the final administrative decision and each party shall be bound by it. Either party may appeal the decision to a court of competent jurisdiction within 90 days of the receiving of notice of this decision.

DATED: June 5, 2007

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TIMOTHY S. THOMAS  
Administrative Law Judge  
Office of Administrative Hearings